SUPREME COURT, U. S.

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MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-730

PETER SABATINO,

Petitioner,

—v.—

UNITED STATES OF AMERICA.

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. Misc.

PETER SABATINO,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner, Peter Sabatino, respectfully prays that this Court issue a writ of certiorari to review the Judgment and Order of the United States Court of Appeals for the Second Circuit, which affirmed Petitioner's conviction for making a false statement on an automobile loan application in violation of 18 U.S.C. Section 1014.

Petitioner was convicted after a jury trial on February 26th and 27th, 1973, Honorable Edward Weinfeld presiding, Petitioner was sentenced to four months in prison and to pay a fine of $2,500.00, and the United States Court of Appeals for the Second Circuit affirmed in a five page opinion annexed hereto.

JURISDICTION

The jurisdiction of this Court is invoked under Title 28 United States Code, §1251 (1). The Court of Appeals for the Second Circuit rendered its decision in a five page opinion dated October 5, 1973 unanimously affirming the conviction.

QUESTIONS PRESENTED

1. Whether 18 U.S.C., Section 1014, making it unlawful to make a false statement on loan and credit applications generally can constitutionally be held to apply to the car loan situation or whether the statute is strictly related to urban renewal and similar transactions.

Constitutional and Statutory Provisions Involved

The Fourteenth Amendment to the United States Constitution and 18 U.S.C., Section 1014.

STATUTE

§1014 Loan and credit applications generally; renewals and discounts, crop insurance

Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of the Reconstruction Finance Corporation, Farm Credit Administration, Federal Crop Insurance Corporation, Farmers' Home Corporation, the Secretary of Agriculture acting through the Farmers' Home Administration, any Federal intermediate credit bank, or any division, officer or employee thereof, or of any corporation organized under sections 1131 to 1134 of Title 12, or of any regional agricultural credit corporation established prusuant to law, or of the National AGricultural Credit Corporation, a Federal Home Loan Bank, the Federal Home Loan Bank Board, the Home Owners' Loan Corporation, a Federal Savings and Loan Association, a Federal land bank, a joint-stock land bank, a Federal land bank association, a Federal Reserve Bank, a small business investment company, a Federal credit union, an insured State-chartered credit union, any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, any bank the deposits of which are insured by the Federal Deposit Insurance Corporation, any member of the Federal Home Loan Bank System, the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the Administrator of the National Credit Administration, upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change of extension of any of the same, by renewal, deferment of action, or otherwise, or the acceptance,

release, or substitution of security therefor, shall be fined not more than $5,000 or imprisoned not more than two years or both.

As amended Oct. 19, 1970, Pub.L. 91-468, §7, 84 Stat. 1017; Dec. 31, 1970, Pub.L. 91-609, Title IX, §915, 84 Stat. 1815.

FACTS

The essence of the within prosecution was an allegation by the Government that the Petitioner made a false statement on a loan application regarding an automobile loan for use by a bank insured by the Federal Deposit Insurance Corporation. The Petitioner purchased a Buick automobile from Caplan Buick of Brooklyn and was charged with lying on the loan application in two regards, that he put down as his place of employment The Haven Restaurant where he allegedly was making $200. a week, a fact which the Government said was untrue, and that he lied when he said there were no judgments against him, when in fact two Civil Court judgments were on the record.

Prior to the actual taking of testimony, the Trial Court ruled that proof of payments made in connection with a loan which was secured after a false loan application was made is not relevant

with respect to the essential elements of the crime. The Court told both attorneys not to refer to the matter at the trial, and that if the Petitioner testified, he could not say that he had paid or was paying the loan (4-6). An exception was taken by counsel on the grounds that it created an unfair inference to the jury that the loan was never paid and that it would be a fraudulent loan (5). An oral motion was then made to dismiss the indictment on the grounds that the statute was unconstitutional and that it was inapplicable because it was directed at F.H.A. loan situations and that the Government was practicing selective discrimination. Counsel pointed out that there was no complainant in this case, there was no loss of money, and that since practically everyone in the United States could be held to have violated this section of the law in sone degree, the Government could not arbitrarily choose to prosecute those they wished to and let everyone else go (6-7). This motion was denied (7) and the Government then opened.

The first witness was JOSEPH LaROSA, a salesman at Caplan Buick (9). He said that in

*Numerical references are to pages of Appendix in Court of Appeals.

1971 the Petitioner purchased a car and requested automobile financing (10). He also said that he asked questions and filled out the application for the customer in his own handwriting (10-11). The actual loan application was received in evidence without objection as Government's Exhibit 1, and the witness testified that he filled it out with information supplied by the Petitioner in his presence (13). Mr. LaROSA also said that he was advised by the Petitioner that he was employed as the manager of The Haven Restaurant, 407 Avenue U, Brooklyn, New York, having been employed there for four years, and was making $200. per week in salary (13-14). He listed the total amount of debts of the Petitioner as none and also indicated that there were no judgments or legal proceedings against the Petitioner pursuant to information supplied by him (15-16).

On cross-examination the witness admitted that he had not told the petitioner that the application was going to a bank that was federally funded or insured by the F.D.I.C. or that it was a federal crime to give false information on that type of application (17). It was also noted that the application form did not reveal this informa-

The next witness was HERBERT CAPLAN, the owner of Caplan Buick, who said he had known the Petitioner for more than a year (22). He covered his arrangements with G.M.A.C. and the Bankers Trust Company to finance car loans and the loan application relative to Bankers Trust was supplied by the banking institution. A W-2 form was taken from the file of Caplan Buick which indicated that the petitioner was employed at The Haven Restuarant at a salary of $200. per week was received in evidence, but the witness did not know who the form came to be in the file (34, 39-40).

The witness discussed the various documents taken from the Caplan Buick file and it was pointed out that the new car contract did not indicate it was to be financed through Bankers Trust, but on the contract there was material on the form indicating that it had been requested that G.M.A.C. be the institution through which the loan should be processed since the Petitioner had previously paid one which had been financed through G.M.A.C. (34-35)

Defense counsel also attempted to say that

Caplan had an agreement with the bank guaranteeing the loan and that Caplan Buick would pay it if the petitioner defaulted,but the Court told the jury that the question of a loan was irrelevant (36).

It was then brought to the jury's attention that this particular loan was a recourse loan, meaning that if the Petitioner did not pay, Caplan was obligated to make good the loan. A recourse assignment was found in the file and marked into evidence, but the Court told the jury it was irrelevant (43). Mr. Caplan admitted that the original recourse agreement had been sent to the Bankers Trust Company, but when counsel asked whether that meant that the bank had not relied on the loan application but rather on the guarantee, the Court would not aloow the witness to answer (44).

JOHN J. WATERS, a Vice President of Bankers Trust in charge of the Collection Department, whose duty it was to collect all deliquent loans or accounts, was the next witness. He explained the loan procedure generally, although it was not his

function and introduced the Bankers Trust file regarding this loan. He described the form kept by the bank when loan information was initially called in by the car agency, and the form in this case indicated The Haven Restaurant as the place of employment of the defendant at a salary of $200. per week (50).

There was a note on the file that indicated that the loan would be approved with a W-2 form (52), a practice which was not uncommon (53), but whether it was specifically dependent on that form was not really within the knowledge of the witness (53). The W-2 form was read to the jury over the objection of counsel that the form had only been found in the file and there was no testimony that it was connected with the Petitioner (54) nor had the salesman testified that the Petitioner gave it to him or procured it.

VINCENZA BONAVITA, a housewife, was the owner of The Haven Restaurant via a corporation owned by the witness and her husband. During the time she purchased The Haven in March of 1938 until sometime in 1971 when she sold it, she never employed the Petitioner or paid any salary to him (62). She also said that in fact she did not

see him or know him until Christmas of 1972, and that she never caused the W-2 form to be issued.

The last witness was ROSE DeCARA, a revenue officer with the Internal Revenue Service, who testified that she examined the records of the agency and that the employer's identification number on the W-2 form had never been assigned to anyone, and there was no record of The Haven Restaurant ever filing W-2 forms (72-73).

On cross-examination she conceded that the absence of the W-2 forms did not mean that The Haven was not in business and did not have employees (73).

The Court thereafter charged the jury and told the jury that the essence of the crime was the making of a false statement on the application for the purpose of influencing the bank and that the crime was not dependent upon the accomplishment of that purpose. The Court said that the purpose of the statute was to allow bank officials to accept on face value these applications, since they could not individually check each one (87), and that the statute did not require reliance on the application (88).

The Court further charged that the guarantee of the car dealer was of no consequnece. Whether the bank was defrauded was irrelevant and whether the bank sustained any loss was likewise irrelevant (73). The jury merely had to find that the Petitioner made false statements on an application insured by the F.D.I.C., that both or either of the statements were false, that they were knowingly made and made for the purpose of influencing the bank's action.

The Court also charged as a matter of law that statements on an application form regarding employment, income from employment and judgments were material (74). The Court said that the jury would have to find that these statements were false, deliberate and intentional and that the Petitioner knew what he was doing (74-75).

The jury found the Petitioner guilty after deliberating for only fifteen minutes and the Petitioner was later sentenced to four months in prison plus a fine of $2,500.00.

REASON FOR GRANTING THE WRIT

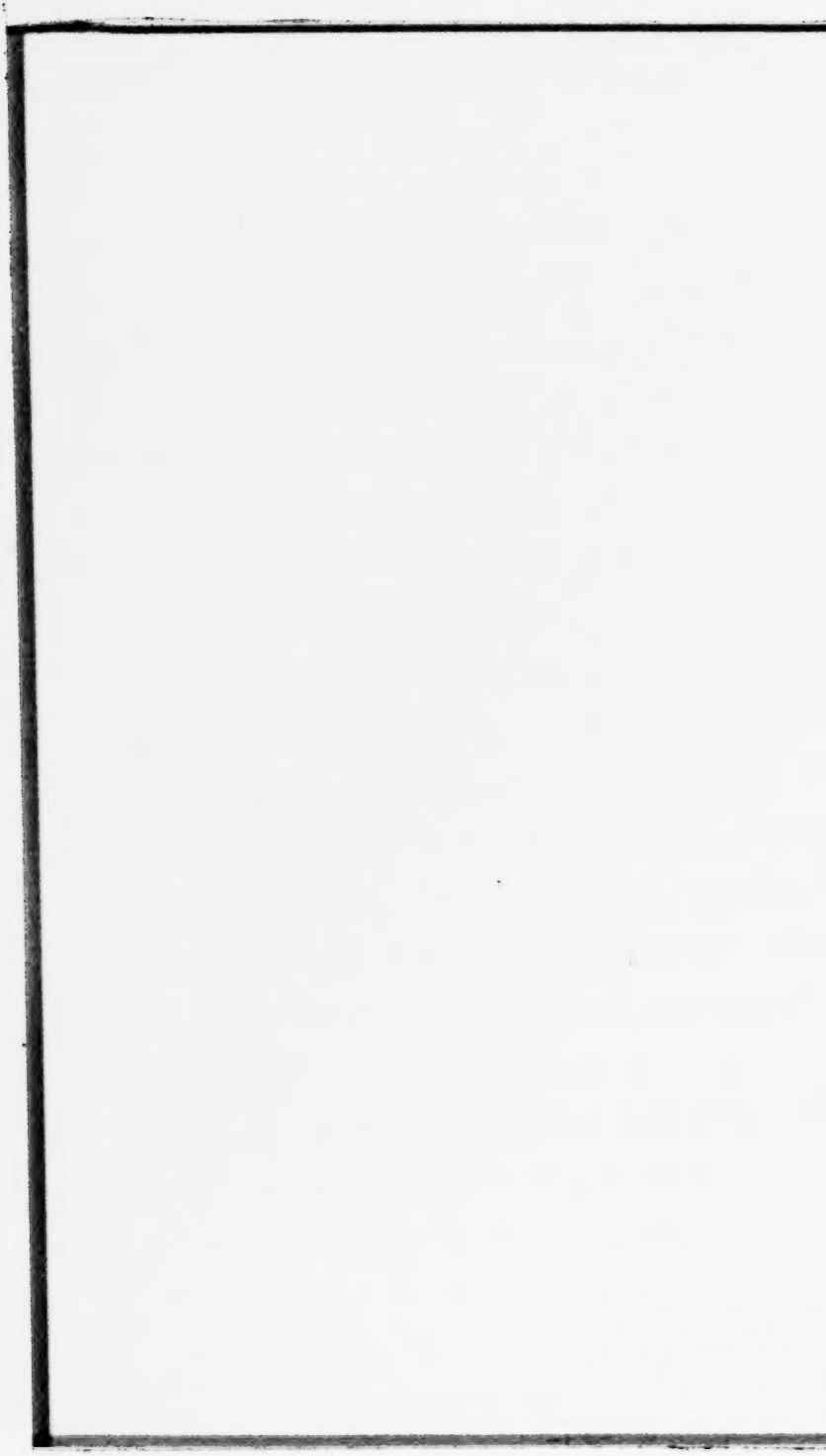
POINT I

THE STATUTE UNDER WHICH PETITIONER WAS PROSECUTED WAS NOT INTENDED TO APPLY TO THE ACTUAL SITUATION OF THIS CASE. TO APPLY 18 U.S.C. §1014 TO THE FACTS AT BAR DEPRIVES PETITIONER OF DUE PROCESS OF LAW.

The statute in question which deals with loan and credit applications in the urban renewal and home financing area has a very long and complicated history.

The statute in force now is a product of the compilation of many facets of law which were found in many different statutes, and can be traced to the early 1900's. The first statute in this area was enacted in 1913 and the amendment under which this petitioner was prosecuted was not enacted until 1970. Pub.L. 91-609, Title IX, §915, 84 Stat. 1850.

One need only study the lengthy minutes and history which accompanied the 1970 enactment to come to the inescapable conclusion that this statute has nothing to do with car loan applications but related solely to urban renewal, model



cities and other land development. 1970 U.S.C. Cong. & Adm. News, p. 5582-5684. In fact, the statute enacted is known as the Housing and Urvan Development Act of 1970 and arose out of the reports of the House Banking and Currency Committee and the Senate Banking and Currency Committee. The reports of that Committee showed that the subjects dealt with were development of the national urban growth pattern (id. 5591, 5632,5636), mortgage credits (id. 5592), rent supplement payments (id. 5593), urban renewal and housing programs (id. 5597, 5599, 5636,5638), model cities (id. 5591, 5600, 5638, 5639), open space land programs (id. 5600-5603, 5639-5641), rural housing (id. 5608,5612), urban growth (id. 5620-5629, 5653), and the Community Development Corporation (id. 5629-5632).

When the Committee reports are considered it is apparent that the entire body of the law dealt with loans for home improvement and community housing and some programs which were financed through the F.H.A. and other similar federal agencies. United States v. Niro, 338 F.2d 439, (2nd Cir. 1964), (Prosecution involving Federal Housing and Loan Association for Home Development); Rears v.

United States, 99 F.2d 752, (C.A.W.Va. 1938), (Prosecution involving Federal Home Loan Bank); United States v. Kridler, 11 F.Supp. 402, (D.C. Iowa 1935), (Prosecution involving Home Owners' Loan Corporation); McLanahan v. United States, 12 F.2d 263, (C.A. Ind. 1926), (Prosecution involving Federal Farm Loan); United States v. McGee, 107 F.Supp. 909, (D.C. Wyo. 1952), (Prosecution involving Reconstruction Finance Corpporation); United States v. Halbrook, 36 F.Supp. 345, (D.C. Mo. 1941), (Prosecution involving Farm Credit Administration).

Petitioner can find not one reported prosecution involving a credit application relating to an automobile loan or similar transaction.

It is clear that since in recent years urban and housing renewal plans or programs could not be financed solely by direct agencies of the Federal government, the use of private banks insured by or working with the Federal government, has become prevelant. It was, therefore, necessary to include applications made to private banks insured by the Federal Deposit Insurance Corporation in the same category as applications previously made to one of the many different Federal agencies

dealing strictly with home financing or urban renewal. Through one hundred pages of Committee reports the only mention of criminal penalties involved §913 of the Housing and Urban Development Act of 1970, and according to the Committee reports, all it does is include applications in connection with loans made to such an institution in the same category as applications previously covered by existing law which were made to institutions such as the Federal Home Loan Bank and the Federal Home Loan Bank Board, the Home Owners' Loan Corporation, the Farmers' Home Corporation and other such institutions. In fact, the Committee report at page 5617 states the purpose of the amendment:

> "Criminal Provisions
>
> Section 913 would describe more explicitly the institutions which are covered by 18 U.S.C. 1014, which provides penalties for making false statements or reports in connection with loans or other similar transactions, which the law presently applies to statements made to any Federal home loan bank, the Federal Home Loan Bank Board, or a Federal savings and loan association, the proposed amendment would also include the Federal Savings and Loan Insurance Corporation, any institution insured by that Corporation, any member of a Federal home loan bank and any bank insured by the Federal Deposit Insurance Corporation."

Since there has never been a reported prose-

cution regarding a car loan, the situation is created where any citizen in applying for a car loan cannot possibly be aware of the existence of §1014 and its applicability to such a transaction. It is found deep in a body of law regarding Housing and Urban Renewal. It cannot possibly be held that fair notice is given to the public at large that it would apply to such a situation as in the case at bar, and the net result is that practically every citizen of the United States is probably in violation of this statute without intending to violate it or knowledge that it exists. It is hard to see how any jury could find that the Petitioner knowingly violated the law, when the Committee reports in Congress did not include one word which indicated applicability to any situation other than one involving housing and urban renewal.

It is most respectfully urged that to prosecute Petitioner under this statute deprives him of due process, in that the statute cannot fairly be interpreted to apply to the situation at bar, nor does it give reasonable notice that the activity complained of is criminal. The statute is either unconstitutional or should be interpreted as inapplicable to the car loan

situation.

If a prosecution of this type is upheld, it can readily be appreciated that other types of applications involving banks could come under its terms. Since the statute mentions, "upon any application, ... or loan, ...", it could be held to apply to any application of any sort, whether it is for a loan or other purpose. Thus, an application for a job as a bank employee, for a checking or savings account or for such other similar purposes, could also be a violation of this statute.

It is respectfully urged that to allow prosecutions under this statute as the one at bar is unreasonable, vague and contrary to the Petitioner's rights under the United States Constitution and any fair interpretation of the intent of Congress. Counsel for Petitioner objected to this prosecution on the grounds that the statute was unconstitutional or inapplicable becuase it was directed at housing loan situations rather than automobile transactions, but the motion was denied (6A-7A).

As this Court can see, the Court of Appeals, in its opinion annexed hereto, indicated that doubt existed as to whether the statute in question applied to the car loan situation and also suggested that there is ambiruity on this point to warrant this Court granting certiorari.

CONCLUSION

THE PETITION FOR CERTIORARI SHOULD BE GRANTED OR AT THE MINIMUM THE CAUSE SHOULD BE REMANDED TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT TO DECIDE THE ISSUE INVOLVING 24(b) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE.

Respectfully submitted,

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OF COUNSEL

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 1069—September Term, 1972.

(Submitted July 18, 1973 Decided October 5, 1973.)

Docket No. 73-1690

UNITED STATES OF AMERICA,

Appellee,

v.

PETER SABATINO,

Defendant-Appellant.

Before:

MOORE, OAKES, *Circuit Judges,* and
GURFEIN,* *District Judge.*

Appeal from judgment of conviction after jury trial in the United States District Court for the Southern District of New York, Edward Weinfeld, *J.*, of unlawfully making false statements of material facts upon an application for an automobile loan for the purpose of influencing the action of Bankers Trust Company, in violation of 18 U.S.C. §1014.

Affirmed.

STANLEY M. MEYER, *for Appellant* (Preminger, Meyer & Light, Brooklyn, New York).

* Honorable Murray I. Gurfein, of the United States District Court for the Southern District of New York, sitting by designation.

MICHAEL C. EBERHARDT, Special Attorney, United States Department of Justice (Paul J. Curran, United States Attorney, John W. Nields, Assistant United States Attorney, on the brief), *for Appellee.*

GURFEIN, *District Judge:*

A jury found the appellant, Peter Sabatino, guilty of a violation of 18 U.S.C. § 1014.[1] The specific charge in the one count indictment was that Sabatino unlawfully made false statements of material facts upon an application for a loan for the purpose of influencing the action of the

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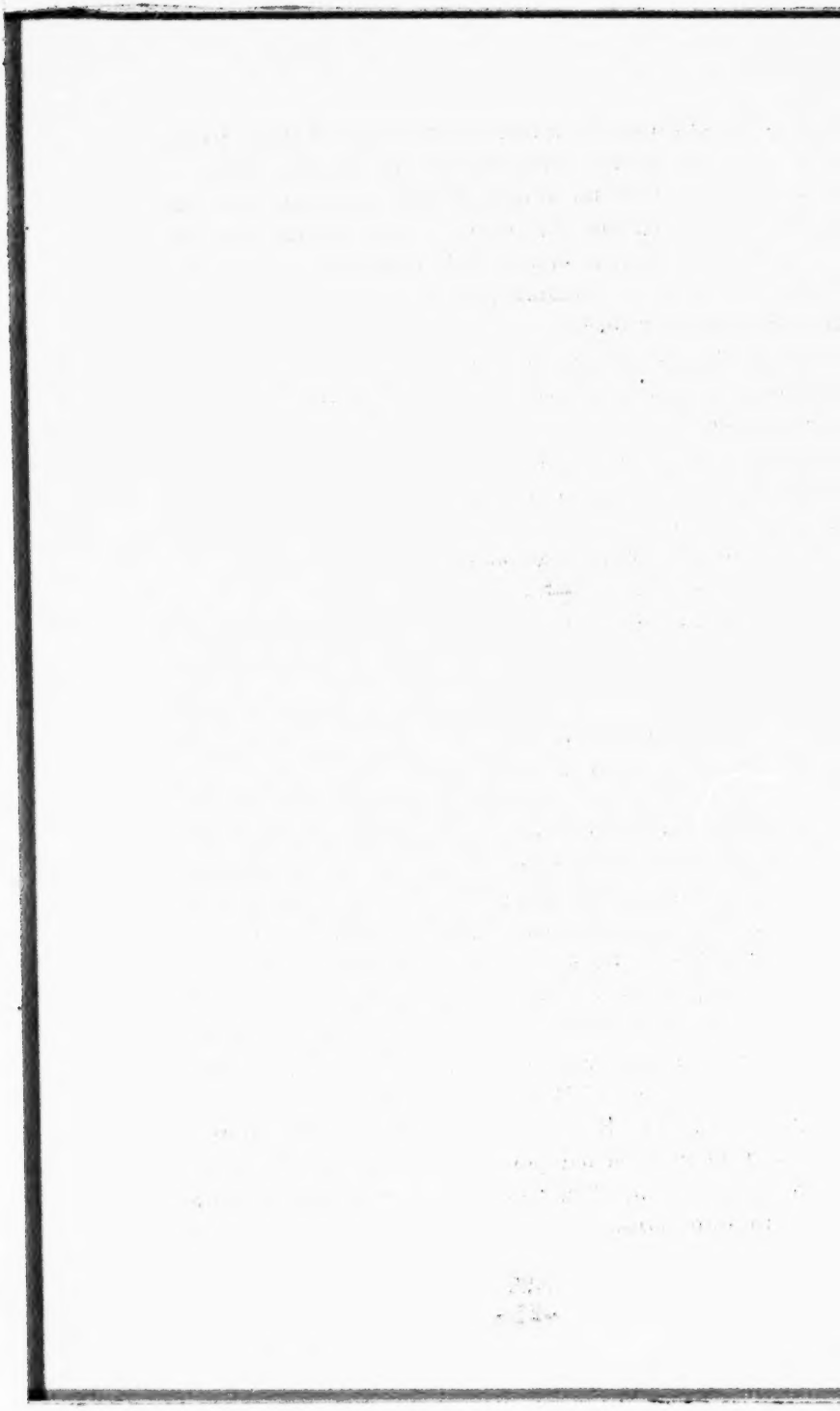
1 §1014. Loan and credit applications generally; renewals and discounts; crop insurance

Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of the Reconstruction Finance Corporation, Farm Credit Administration, Federal Crop Insurance Corporation, Farmers' Home Corporation, the Secretary of Agriculture acting through the Farmers' Home Administration, any Federal intermediate credit bank, or any division, officer, or employee thereof, or of any corporation organized under sections 1131 to 1134m of Title 12, or of any regional agricultural credit corporation established pursuant to law, or of the National Agricultural Credit Corporation, a Federal Home Loan Bank, the Federal Home Loan Bank Board, the Home Owners' Loan Corporation, a Federal Savings and Loan Association, a Federal land bank, a joint-stock land bank, a Federal land bank association, a Federal Reserve bank, a small business investment company, a Federal credit union, an insured State-chartered credit union, any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, any bank the deposits of which are insured by the Federal Deposit Insurance Corporation, any member of the Federal Home Loan Bank System, the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the Administrator of the National Credit Union Administration, upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than $5,000 or imprisoned not more than two years or both.



Bankers Trust Company, a bank the deposits of which were insured by the Federal Deposit Insurance Corporation ("F.D.I.C."), in that the appellant falsely stated that he had been employed for four years as the manager of the Haven Restaurant at a salary of $200 per week and that he had never had any judgments and the like filed against him. Appellant offered no defense. The Government proved the statements were false. Judge Weinfeld sentenced appellant to a term of imprisonment of four months and to a fine of $2,500.

Appellant contends 1) that the statute was not intended to cover auto loans such as this one and that, in so applying it, the appellant was deprived of due process of law; 2) that the court erred in excluding proof of repayment of the loan and holding it irrelevant; and 3) that the evidence was insufficient to establish guilt beyond a reasonable doubt.

I

Appellant contends that Section 1014, by virtue of its history, must be limited to housing and farm loans, to the exclusion of auto loans. He contends it is a violation of due process to hold otherwise.

Appellant, who made a false application in material respects, has no standing to assert the unconstitutionality of the statute under which he was convicted. *Dennis* v. *United States,* 384 U.S. 855, 865-866 (1966); *Kay* v. *United States,* 303 U.S. 1, 6-7 (1938); *United States* v. *Kapp,* 302 U.S. 214, 218 (1937). The statute is, in any event, constitutional. See *Westfall* v. *United States,* 274 U.S. 256 (1927); *Hiatt* v. *United States,* 4 F.2d 374, 377 (7 Cir. 1924), cert. denied, 268 U.S. 704 (1925). But the appellant here contends not only that Congress lacked power to enact the statute as applied, but also that Congress did not intend the statute to apply to auto loans.

The question whether Congress intended an extension of federal criminal jurisdiction to this area of personal loans by state banks is not entirely free from doubt. The F.D.I.C. insures 13,669 banks, of which 9,063 are state banks. (Report of F.D.I.C. re Commercial and Mutual Savings Banks as of June 30, 1973, published by F.D.I.C.) The vast number of personal loans made by banks generally throughout the nation may be judged from the fact that a single large New York bank in the year 1972 alone is said to have made more than 28,000 such loans.

We have been told by the Supreme Court that extension of federal criminal jurisdiction will not be presumed, but must be clearly expressed in the statute. *Erlenbaugh* v. *United States*, 409 U.S. 239, 247 (1972); *United States* v. *Bass*, 404 U.S. 336 (1971); *Rewis* v. *United States*, 401 U.S. 808 (1971). See *United States* v. *Archer*, —— F.2d ——, Slip Op. Nos. 1039, 1040, 1041, Sept. Term, 1972, (2 Cir. July 12, 1973).

As Mr. Justice Marshall said in *Bass*, supra,

> "[U]nless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance. . . . In traditionally sensitive areas, such as legislation affecting the federal balance, the requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision." (404 U.S. at 349, footnote omitted)

In *Erlenbaugh*, supra, the Court indicated that statutory construction should avoid producing situations in which relatively minor state offenses would be transformed into federal felonies. We can say here, as the court did in *Archer*, supra at 4824: "The legislative history affords little indication of Congressional awareness of the enor-

mous reach the statute could have if literally interpreted."

That may indeed be arguably true with respect to Section 1014. We are, nevertheless, constrained to find that Section 1014 applies to the crime charged for the following reasons:

1. Section 1014 is a code section enacted in the 1948 recodification of Title 18 of the United States Code. It is true, as appellant suggests, that the thirteen statutes which were codified into the single code section were, for the most part, statutes dealing with false statements in connection with farming and housing.[2] But two then existing statutes which were also included, were different, penalizing false statements for the purpose of influencing a) Federal Reserve Banks, former 12 U.S. §596 and b) the Reconstruction Finance Corporation, former 15 U.S.C. §616(a). Neither of these federal agencies was limited to lending for farm or home construction needs. By 1970, the codified section was, accordingly, not devoted exclusively to criminal coverage for false applications in the farming and home construction fields.

2. Although there was no Congressional discussion about the reason for including "any bank insured by the Federal Deposit Insurance Corporation" in Section 1014,[3] a

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2 These thirteen provisions were: Title 7, United States Code, Sections 1026(a) and 1514(a), Title 12, United States Code, Sections 596, 981, 1122, 1123, 1138d(a), 1248, 1312, 1313, 1441(a), 1467(a), Title 15, United States Code, Section 616(a). See 1940 ed. of United States Code.

3 The amendment to 18 U.S.C. §1014 was a minor part of a comprehensive act dealing with many phases of housing construction and rehabilitation, including home financing. Although the Report of the House Committee on Banking and Currency stated that the amendment of section 1014 would include "any bank insured by the Federal Deposit Insurance Corporation," H.R. Rep. No. 91-1556, 91st Cong. 2nd Sess. 1970, U.S. Code Cong. and Admin. News 5617, the House Bill (HR 19436) as enacted contained no such provision. The Senate Bill (S.

look at existing statutes supports the view that the extension of federal criminal jurisdiction to such offenses against state banks was not a giant step. Embezzlement from banks which were members of the Federal Reserve System has been a federal crime since the Federal Reserve Act of 1913. 38 Stat. 260. The jurisdiction over member banks, which included state banks, was clarified in 1918. 40 Stat. 972. Embezzlement from F.D.I.C. insured banks, which included state banks, was made a federal crime in 1935. Robbery of state banks insured by the F.D.I.C. has been a federal crime since 1935. 49 Stat. 720.

3. Although false statements to F.D.I.C. insured banks was not made a federal crime until the enactment of the Housing and Urban Development Act of 1970, Pub. L. 91-609, attention was called during the Congressional debates to the inclusion of "institutions insured by the Federal Savings and Loan Insurance Corporation," 116 Cong. Rec. 42630 (1970), which also includes state-chartered institutions. See 12 U.S.C. §1726. The inclusion of such institutions tends to show a Congressional awareness that state-chartered institutions were being brought within the coverage of the section solely because they are federally insured.

We cannot, therefore, detract from the literal meaning of the statute which, in terms, is applicable to the crime charged. See *Ex Parte Collett*, 337 U.S. 55, 61 (1949); *Packard Motor Car Co.* v. *NLRB*, 330 U.S. 485, 492 (1947); *United States* v. *American Trucking Associations, Inc.*, 310 U.S. 534, 543 (1940). We hold that the statute applies to all false statements made to influence the action of state banks insured by the F.D.I.C.

4368) contained no analogous criminal provisions whatever. The Conference added the provision relating to F.D.I.C. insured banks as well as other institutions and agencies, but without reported comment.

II

Such a statute, so apparently expansive of federal criminal jurisdiction, cannot be read broadly, however. It is a criminal statute, and "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Rewis* v. *United States*, supra, 401 U.S. at 812. But there is no ambiguity with respect to the specific intent required to be proved. The false statement which the statute prohibits shall be "for the purpose of influencing in any way the action of . . . any bank the deposits of which are insured by the Federal Deposit Insurance Corporation." To have "the purpose of influencing" such a bank, the defendant must have known that it was a bank that he intended to influence. We do not determine that he must know that the bank is insured by the F.D.I.C., but, at least, he must know that it is "a bank" to which he has made the false statement in his application for a loan.

The very able trial judge, with his usual care, charged precisely on scienter that "[t]he essence of the crime is the making of a false statement in an application for a loan for the purpose of influencing in any way the action of the bank from which the loan is sought." And he correctly charged as an essential element of the crime "that they were made for the purpose of influencing the Bankers Trust Company's action on the loan application."

The other contentions made by appellant lack merit. He contends that failure to prove reliance by the bank on the false statements is fatal to the prosecution case. That is not so. Speaking of a prosecution under a predecessor statute to 18 U.S.C. §1014 (12 U.S.C. §1467a). Chief Justice Hughes said: "It does not lie with one knowingly making false statements with intent to mislead the officials of the Corporation to say that the statements were not influential or the information not important." *Kay* v.

United States, 303 U.S. 1, 5-6 (1938); *United States* v. *Goberman*, 458 F.2d 226 (3 Cir. 1972); *Brilliant* v. *United States*, 297 F.2d 385 (8 Cir.), cert. denied, 369 U.S. 871 (1962).

Appellant further contends that the trial court erred in excluding evidence of repayment of the loan. Proof that an applicant did not intend to defraud the bank is irrelevant to whether he intended to influence the bank by false statements. *United States* v. *Pesano*, 293 F.2d 229 (2 Cir. 1961); *United States* v. *Goberman*, supra.

The argument that the evidence was insufficient to support the conviction is not frivolous, but we have concluded that there was enough evidence for a jury to find beyond a reasonable doubt that the appellant intended to influence the Bankers Trust Company to grant the loan.

Although the argument was not presented succinctly to Judge Weinfeld, nor, indeed, on this appeal, we have taken note of the circumstances that might support appellant's views. The appellant had previously financed an automobile through General Motors Acceptance Corporation ("GMAC"), concerning which there is no specific federal criminal statute. The purchase contract with the dealer did not refer to Bankers Trust Company. The loan application, while it was on a Bankers Trust Company form and signed by appellant, was filled in by the salesman. There was no proof of any oral conversation in which the appellant was told that this loan was not to be made by GMAC, as it had been earlier, but rather by Bankers Trust Company.

There was testimony, however, that the salesman showed the form, which was headed "Bankers Trust Company—Buyer's Credit Statement" to appellant who affixed his signature. We think that is enough to create an inference, which the jury could accept, that appellant knew he was making an application to the bank. See *United States* v.

Macnzo, 475 F.2d 251 (7 Cir. 1973); *United States* v. *Barbato*, 471 F.2d 918 (1 Cir. 1973); *United States* v. *Lee*, 422 F.2d 1049 (5 Cir. 1970).

Affirmed.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 1069 September Term 1972

Submitted: July 18, 1973 Decided: October 5, 19

Docket No. 73-1690

- X

UNITED STATES OF AMERICA,

Appellee,

v.

PETER SABATINO,

Defendant-Appellant.

- X

Before MOORE, OAKES, Circuit Judges, and GURFEIN,* District Judge.

Appeal from judgment of conviction after jury trial in the United States District Court for the Southern District of New York, Edward Weinfeld, J., of unlawfully making false statements of material facts upon an application for an automobile loan for the purpose of influencing the action of Bankers Trust Company, in violation of 18 U.S.C.

Sec. 1014.

Affirmed.

Stanley M. Meyer, for Appellant
(Preminger, Meyer & Light,
Brooklyn, New York)

Michael C. Eberhardt, Special
Attorney
United States Department of
Justice (Paul J. Curran, United
States Attorney, John W. Nields,
Assistant United States Attorney,
on the brief) for Appellee

*Honorable Murray I. Gurfein, of the United States District Court for the Southern District of New York, sitting by designation.

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FILED
FEB 4 1974

No. 73-730

In the Supreme Court of the United States

OCTOBER TERM, 1973

PETER SABATINO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-730

PETER SABATINO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that 18 U.S.C. 1014, which proscribes, *inter alia,* the making of false statements on any loan application for the purpose of influencing a federally insured bank, cannot "constitutionally" be held to apply to an application for a loan to purchase an automobile (Pet. 2).

After a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted of making false statements on a loan application, in violation of 18 U.S.C. 1014 and 2. Petitioner was sentenced to four months' imprisonment and fined $2,500. The court of appeals affirmed (Pet. 19).

The evidence showed that in April 1971, in connection with an automobile purchase, petitioner answered certain questions required for the completion of a loan application while the salesman recorded the answers on the form. The application was captioned "Bankers Trust Company Buyers Credit Statement" and was signed by petitioner after his answers were recorded (T. 25, 27-28; Government Exhibit 1).[1] Petitioner told the salesman he was employed as the manager of the Haven Restaurant (T. 25); that he had been employed there for four years (T. 26); and that no judgments had ever been filed against him (T. 28). After the bank credit officer checked petitioner's IRS W-2 form, which was on file with the automobile dealer, he approved the loan (T. 51-52, 64-65).

The owner of the restaurant, which was at the same location but had changed its name in 1968, testified that she had never employed petitioner, nor paid him any money, nor authorized the issuance of a W-2 form in petitioner's name (T. 74-75). Records of the Internal Revenue Service revealed that the identification number on the particular W-2 form in question had not been assigned by IRS to any employer and that there was no record of filing in the Brooklyn IRS office under that identification number for the Haven Restaurant (T. 84). The government also introduced certified copies of two default judgments which had been entered against petitioner prior to the time he signed the application (T. 86, 90). The defense offered no evidence.

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[1] "T." refers to the trial transcript. Bankers Trust Company is insured by the Federal Deposit Insurance Corporation (T. 65).

Petitioner contends that Section 1014 applies only to applications for loans in connection with purchases of homes or to farm loans and does not apply to automobile loans. Section 1014 states, in relevant part: "Whoever knowingly makes any false statement * * * for the purpose of influencing in any way the action of * * * any bank the deposits of which are insured by the Federal Deposit Insurance Corporation * * * upon any application * * * or loan * * * [shall be fined or imprisoned, or both]."

Although Section 1014 is by its terms clearly applicable here, petitioner claims that the plain language of the statute must be disregarded and that, barring such a limiting construction, Section 1014 is unconstitutional because it fails to give "reasonable notice that the activity complained of is criminal" (Pet. 16).[2] These arguments are fully answered in the opinion of the court of appeals, on which we rely in urging that the petition for certiorari be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1974.

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[2] Contrary to petitioner's suggestion that "there has never been a reported prosecution regarding a car loan" (Pet. 14, 15-16), this Court recently denied certiorari in a case involving the application of Section 1014 to automobile loans. *United States* v. *Trexler*, 474 F. 2d 369 (C.A. 5), certiorari denied, 412 U.S. 929.

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